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10 HONORABLE THOMAS O. RICE
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13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF WASHINGTON
15

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 NO. 2:22-CR-00666-TOR-1
19

20 V.
21 RAYMOND JOHN PFLUGER,

22 Defendant.
23

DEFENDANT PFLUGER'S
SENTENCING MEMORANDUM

24 Defendant Raymond Pfluger, by and through his attorney, Brooke D.
25
26 Hagara, of Hagara Law, PLLC, hereby submits his Sentencing Memorandum.

27 I. Introduction
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29 The defense has reviewed the Presentence Report in this matter and
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31 resolved any objections. For the reasons stated herein and at the time of
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1 sentencing, Mr. Pfluger respectfully requests that the Court utilize its discretion
 2 to depart from the sentencing guidelines and sentence him below the guideline
 3 range. A departure is warranted either pursuant to USSG § 5H1.3 Mental and
 4 Emotional Conditions, or pursuant to 18 U.S.C. § 3553(a) as a variance.
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9 **I. 18 U.S.C. § 3553(a)**

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11 In accordance with the United States Supreme Court's decision in *U.S. v.*
 12 *Booker*, 543 U.S. 220 (2005), when sentencing a defendant, the sentencing
 13 court must consider the factors listed in 18 U.S.C. § 3553(a). Section 3553(a)
 14 provides, in pertinent part:

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18 The court shall impose a sentence sufficient but not greater
 19 than necessary to comply with the purposes set forth in
 20 paragraph (2) of this subsection. The court, in determining
 21 the particular sentence to be imposed, shall consider

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23 (1) the nature and circumstances of the offense and the
 24 history and characteristics of the defendant;

25 (2) the need for the sentence imposed—

26 a. to reflect the seriousness of the offense, to promote
 respect for the law, and to provide just punishment
 for the offense;

27 b. to afford adequate deterrence to criminal conduct;

28 c. to protect the public from further crimes of the
 defendant; and

29 d. to provide the defendant with needed educational or
 vocational training, medical care, or other

(3) correctional treatment in the most effective manner;
the kinds of sentences available...

(Emphasis added.)

Although the sentencing court must also consider the sentencing guidelines, it must not give more weight to the sentencing guidelines than to § 3553(a). *U.S. v. Zavala*, 443 F.3d 1165, 1169 (9th Cir. 2006). Moreover, if the sentencing court treats a guidelines range as the presumptive sentence, the court “will commit legal error by misapplying § 3553(a).” *Id.* at 1170.

The sentencing court’s “task is to attempt to find the most reasonable sentence for [the particular defendant] within the territory of all possible reasonable sentences.” *Id.* Sentencing is not mechanical, but rather a “difficult art.” *U.S. v. Diaz-Argueta*, 447 F.3d 1167, 1172 (9th Cir. 2006). It is “an act of reason as the judge looking at this particular person and the circumstances of the crime that this particular person has committed makes a judgment following the prescriptions of [§ 3553(a)].” *Id.*

a. Nature and circumstances of the offense and the history and characteristics of the defendant

Mr. Pfluger's chaotic early life was marked by abuse, substance use, mental illness, and lack of stability. This consistent childhood trauma and Mr.

1 Pfluger's own struggles with mental illness and substance abuse have shaped
 2 the 41-year-old man now standing before the court for sentencing on a drug
 3 offense.
 4

5 Mr. Pfluger was born without the ability to hear properly, requiring
 6 surgery. Mr. Pfluger's mother and father divorced when he was six months old,
 7 and he had no contact with his father growing up. Throughout his childhood, Mr.
 8 Pfluger bounced back and forth between his maternal grandparents. Both his
 9 grandparents were strict and controlling, verbally and emotionally abusive. His
 10 grandfather was drunk most of the time. His maternal uncles physically abused
 11 him.
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13 Mr. Pfluger's mother was a drug addict who physically abused him and
 14 used crack cocaine throughout his childhood. Both of Mr. Pfluger's parents
 15 have been diagnosed with mental illness: bipolar and/or schizophrenia.
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17 At 10, Mr. Pfluger was diagnosed with mental illness and prescribed
 18 medication. Mr. Pfluger's drug use began at about the same time, with the use
 19 of marijuana and LSD.
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21 At 11, Mr. Pfluger was sexually abused by one of his mother's
 22 acquaintances. At 12, he started using crack cocaine with his family members. At
 23

1 the same age, Mr. Pfluger slit his wrists. He used cocaine daily until he was 15,
 2 then stopped until his early 20s. Although Mr. Pfluger attended high school
 3 through his junior year, he dropped out when he turned 18, later obtaining his
 4 GED.

5 Mr. Pfluger's struggle with mental illness and substance use continued into
 6 his adulthood, up through his arrest and return to custody in the current case.
 7 While enlisted in the U.S. Army, he was diagnosed with bipolar, manic-
 8 depressive disorder, and schizoaffective disorder. He has been hospitalized eight
 9 or nine times and attempted suicide twice. He has many times, spurred by his
 10 addiction, considered suicide by consumption of pills. Most recently, he received
 11 mental health services from Christopher Korsgaard, a psychologist in Spokane.
 12 Other than a 30-day inpatient program while this case was pending, Mr. Pfluger
 13 has never received substance abuse treatment. He is anxious to participate in co-
 14 occurring treatment for both substance abuse and mental health issues.

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b. A sentence addressing Mr. Pfluger's substance and mental health issues will protect the public and provide Mr. Pfluger with necessary rehabilitation

33 Mr. Pfluger's criminal conduct stems from longstanding mental health and

1 substance abuse issues. A program of sufficient length and depth addressing
 2 both of those issues will put both Mr. Pfluger in the best position to be
 3 successful in the community upon his release and protect that community when
 4 he again becomes part of it.

5 The longest sentence Mr. Pfluger has ever served was 36 months, when he
 6 was 23 years old. A prison sentence will have a deterrent effect on Mr.
 7 Pfluger's criminal behavior, but the most fitting sentence that will be one that
 8 balances deterrence with his significant need for mental health and substance
 9 abuse treatment.

10 c. **Departure from sentencing guidelines range**

11 Mr. Pfluger's significant history and struggle with mental illness (USSG §
 12 5H1.3 Mental and Emotional Conditions) support a downward departure.
 13 Under USSG § 5H1.3, mental and emotional conditions may be relevant in
 14 determining whether a departure is warranted, if such conditions, individually
 15 or in combination with other offender characteristics, are present to an
 16 unusual degree and distinguish the case from typical cases covered by the
 17 guidelines.

18 Mr. Pfluger's diagnosis at age 10, suicide attempt at age 12, and

1 numerous hospitalizations over the course of his life, in addition to the mental
2 illness of family members, in combination with the physical, sexual, and
3 emotional abuse and struggle with substance abuse all combine to make Mr.
4 Pfluger's situation distinguishable from other cases covered by the guidelines.
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7 Alternatively, pursuant to 18 U.S.C. § 3553(a), when taking into
8 consideration Mr. Pfluger's history and characteristics, the court can impose a
9 sentence below the guidelines range as a variance. A sentence below the
10 guideline range is sufficient, but not greater than necessary, to accomplish the
11 objectives of 18 U.S.C. § 3553(a).
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14 Accordingly, Mr. Pfluger respectfully requests that the Court exercise its
15 discretion and sentence him a sentence below the applicable guideline range.
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23 RESPECTFULLY SUBMITTED this 25th day of April, 2023.
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26 Hagara Law, PLLC
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/s/ Brooke Diane Hagara

Brooke D. Hagara, WSBA #35566
Attorney for Defendant Raymond Pfluger

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Patrick Cashman, Assistant United States Attorney, through the CM/ECF system.

/s/ Brooke Diane Hagara
Brooke D. Hagara